

### REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed September 3, 2008. At the time of the Final Office Action, Claims 1-26 were pending in this Application. Claims 1-26 were rejected. Claims 1, 8, and 15 have been amended. Claims 21-26 are herein cancelled without prejudice or disclaimer. Applicants respectfully request reconsideration and allowance of pending Claims 1-20.

#### **Rejections under 35 U.S.C. § 112**

Claims 1-26 were rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants amend Claims 8 and 15 to overcome these rejections and respectfully request the rejections under 35 U.S.C. §112, second paragraph be withdrawn.

#### **Rejections under 35 U.S.C. §103**

Claims 1-26 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,801,777 issued to Leslie A. Rusch ("*Rusch*") in view of U.S. Patent No. 7,369,850 issued to Felix G. Andrew et al. ("*Andrew*").

Applicants respectfully submit that *Rusch* and *Andrew*, alone or in combination, do not teach every element of Applicants' claims as amended. For example, regarding amended Claim 1, *Rusch* and *Andrew* fail to teach at least:

receiving from a user a ranking of one or more performance factors displayed to the user to be used in determining whether to dynamically switch between network protocols;

while conducting network communications with the first network protocol, automatically determining whether switching from the first network protocol to the second network protocol would improve performance for the client system based at least on the user's ranking of the one or more performance factors;

Neither *Rusch* nor *Andrew* teach receiving a user's ranking of performance factors that are displayed to the user, much less automatically determining whether switching from one network protocol to another network protocol would improve system performance based at least on the user's ranking of the performance factors. If the Examiner believes that *Rusch*

or *Andrew* does teach these features, Applicants request that the Examiner indicate specifically where *Rusch* or *Andrew* teaches a user ranking performance factors that are displayed to the user, and using such rankings for determining whether to automatically switch from one network protocol to another.

For at least these reasons, Applicants respectfully request reconsideration and allowance of amended Claim 1, as well as all claims that depend from amended Claim 1. In addition, for analogous reasons, Applicants request reconsideration and allowance of amended independent Claims 8 and 15, as well as all claims that depend therefrom.

### CONCLUSION

Applicants have now made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants request reconsideration and allowance of Claims 1-20.

Applicants respectfully submit a Request for Continued Examination (RCE) Transmittal, along with a Petition for Two-Month Extension of Time. The Commissioner is authorized to charge the fees of \$810.00 and \$490.00 required to Deposit Account 50-2148 in order to effectuate these filings.

Applicants believe there are no additional fees due at this time. However, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2689.

Respectfully submitted,  
BAKER BOTTS L.L.P.  
Attorney for Applicants



Eric M. Grabski  
Reg. No. 51,749

Date: January 6, 2009

SEND CORRESPONDENCE TO:  
BAKER BOTTS L.L.P.  
CUSTOMER NO. **23640**  
512.322.2689  
512.322.8383 (fax)